

ENERGY CONSERVATION ASSISTANCE ACCOUNT LOAN AGREEMENT

LOAN NUMBER: _____

PRINCIPAL AMOUNT: _____

PROJECT TERM: _____

This Loan Agreement (the "Agreement") is entered into as of the date it is executed by both parties hereto, between the California Energy Resources Conservation and Development Commission (the "Commission") and _____, a _____ ("Borrower") located in _____ County, California.

1. STATUTORY AUTHORITY AND LOAN

- A. Pursuant to the purposes authorized by section 25410, et seq., of the California Public Resources Code (the "Energy Conservation Assistance Act"), the Commission has approved Borrower's loan application dated _____, which is not attached but is expressly incorporated by reference herein.
- B. Subject to the terms, covenants, and conditions contained herein, and the Budget Detail attached as Exhibit A hereto (the "Budget Detail") to the extent it modifies Borrower's loan application, the Commission shall make a loan to Borrower (the "Loan") in the amount of _____ Dollars (\$_____), evidenced by a Promissory Note (the "Promissory Note") for loan number _____ attached hereto as Exhibit B.

2. PURPOSE

The Borrower agrees to expend all funds disbursed pursuant to this Agreement only for the purposes and in the amounts set forth in the attached Budget Detail (the "Project"). Any other use of funds disbursed hereunder shall require prior written approval by the Commission.

3. LOAN DISBURSEMENT SCHEDULE

- A. The Commission agrees to disburse funds to the Borrower upon the Borrower's execution of the attached Promissory Note and any appropriate security instruments and required supplemental documents, including invoices as required in Section 3.C below.
- B. *This paragraph applies only to Borrowers who have received technical assistance or a feasibility study by a consultant under contract to the Commission and are financing the technical assistance or feasibility study reimbursement through this Loan:* The Commission will reimburse itself from the Borrower's Loan proceeds for the cost of the technical assistance or

feasibility study which was provided in accordance with the services agreement, dated _____. Such reimbursement will occur on the date the Commission executes this Agreement and will be equal to \$_____.

- C. Except for the technical assistance or feasibility study cost indicated in Section 3.B above, Loan funds shall be disbursed on a reimbursement basis based on invoices submitted by Borrower in a form approved by the Commission. Billings and proof of payment must be provided to substantiate the request. Commission staff will approve invoices only after verifying requested amounts against backup billings and determining that expenses are appropriate and used for the authorized purposes of this Loan. For executed Agreements, invoices for expenses incurred during the Project Term are eligible for reimbursement.
- D. All invoices must be submitted within sixty (60) days after Project completion.
- E. Ten percent (10%) of the Loan amount will be withheld as retention until the final report is received from the Borrower and the Commission's Project Manager determines the Project has been satisfactorily completed.

4. LOAN REPAYMENT AND INTEREST

All funds disbursed hereunder, together with all interest payable thereon, shall be repaid to the Commission in accordance with the terms of the Promissory Note. The Loan shall bear simple interest at the annual rate set forth in the attached Promissory Note on the principal balance of Loan funds disbursed to the Borrower. Payment of said interest shall be due at the time of semiannual scheduled Loan repayment installments to the Commission, and interest shall accrue from the time of disbursal of funds to the Borrower until receipt of full Loan repayment to the Commission. Interest on Commission reimbursement for technical assistance or the feasibility study, if applicable, described in Section 3.B shall accrue from the date the Commission executes this Agreement until receipt of full loan repayment to the Commission.

5. TERM

- A. The effective date of this Agreement shall be the date on which it has been executed by both parties hereto.
- B. The Borrower agrees to complete performance of its obligations under this Agreement within the applicable periods stated in this Agreement.

6. PREPAYMENT

Borrower shall have the right to prepay all or any part of the amount of this Loan at any time without penalty.

7. PROMISSORY NOTE

In order to evidence its debt to the Commission hereunder, the Borrower agrees to, contemporaneously with the execution of this Agreement, execute and deliver to the Commission the Promissory Note (attached as Exhibit B hereto).

8. ACCOUNTS

- A. The Borrower agrees to establish on its books a separate account for this Loan. This account shall be maintained as long as the Loan obligation remains unsatisfied.
- B. The Borrower further agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn on said account for three (3) years after this Loan is repaid in full.
- C. The Borrower further agrees to utilize a voucher system by which all expenditures from said account will be authorized and authenticated.
- D. The Borrower further agrees to allow the Commission or any other agency of the State of California (the "State") or the federal government, or their designated representatives, on written request, to have reasonable access to, and the right of inspection of, all records that pertain to said account or the Project. The Borrower also agrees to submit to an independent audit, if requested by the Commission, at the expense of the Borrower. Borrower agrees to maintain all such records for a minimum of three years after this Loan is repaid in full, unless the Commission notifies the Borrower, prior to the expiration of such three-year period, that a longer period of record retention is necessary.

9. SOURCE OF REPAYMENT; OPERATION OF PROJECT

- A. Semiannual payments due to the Commission under this Agreement shall be made from savings in energy costs or other legally available funds as the Borrower chooses. If Borrower is a county, city, town, township, board of education, or school district, Borrower agrees that the amount of the semiannual Loan repayment shall not be raised by the levy of additional taxes and shall not be an obligation against tax revenues, but shall be obtained either from savings in energy costs resulting from the subject energy conservation projects or other legally available funds as the Borrower chooses.
- B. Energy cost savings as determined by the Commission are based on energy usage and serving utility rate schedules at the time of the issuance of this Loan, except as specified in Special Conditions, if any, as detailed in this Agreement, and the information and data contained in the Borrower's loan application and technical study. The following will not affect the Commission's initial finding

of energy cost savings, and are not a basis for claiming a lack of energy savings: a) changes in energy use and/or rate schedules which occur after issuance of the Loan, except as specified in Special Conditions, if any, as detailed in this Agreement, b) deviations in the project work scope from what was approved by the Energy Commission, c) changes in the Borrower's facility and/or equipment which occur after the issuance of the loan, including, but not limited to maintenance, operations, schedules, employees and facility alterations and expansions, d) deviations, omissions or errors found in the loan application and technical study after the loan award. The Borrower is responsible for ensuring the accuracy of the information contained in its loan application and technical study. In the event annual energy cost savings resulting from the Project, as determined by the Commission, fail to equal or exceed the amount due under this Agreement, this Agreement may be renegotiated to assure that the repayment amount does not exceed the actual energy savings or avoided costs resulting from the Project, and the Promissory Note will be revised accordingly. In no event, however, will the number of semiannual installments payable hereunder and under the Promissory Note exceed thirty.

- C. The Borrower shall obtain and maintain in its records any and all permits and licenses required to install or operate the Project and shall comply with all local, state, and federal laws, rules and codes concerning the Project. The Borrower shall maintain the Project in good working order for the duration of the Loan and shall insure that staff members are provided appropriate training on the operation and maintenance of the Project. The Borrower shall maintain insurance on the Project and, in the event of any casualty loss covered by such insurance policy, apply the proceeds to the repair of the Project or, with the approval of the Commission, may use the insurance proceeds to install alternate projects to generate alternative energy cost savings to repay the Loan.
- D. The Borrower agrees to provide the Commission with information necessary for administration of the Program for three years following completion of the Project. The needed information includes the following, at a minimum, (1) the annual computation, required by Section 25414 of the Energy Conservation Assistance Act, of energy cost savings for the most recent fiscal year, calculated in the manner prescribed by the Commission and (2) any information or change in assumptions or operations which might affect the Commission's initial determination of energy savings.
- E. The Borrower authorizes any official or agent of the Commission or the State to conduct physical inspections of the Project before the commencement; during construction, installation and implementation of the Project; and at any time prior to the complete repayment of the Loan. In each contract entered into with suppliers of goods and services to install, conduct, or operate the Project, including management services, the Borrower shall include terms

which allow any officer or agent of the Commission or the State access to the Project site and to any books, documents, or records directly relevant to the Project.

- F. Borrower will execute a continuing disclosure agreement to provide annual information and other operating or financial information as required by the Commission and by applicable law if Borrower is notified by the Commission that: a) its aggregate loan repayments equal or exceed 10 percent of the aggregate annual debt service on any series of Bonds, the repayment of which is secured by such loan or loans of the Borrower, or 2) its aggregate loans represent more than 10 percent of the aggregate principal amount of all Bond-funded loans pledged to a single Bond series.
- G. If, prior to final repayment of the Loan, the Borrower sells the equipment or material installed with the proceeds of the Loan or sells the building, facility or system in which the Project has been implemented, then the Borrower shall apply the sale proceeds to repay any remaining balance due under this Agreement in full at the time of such sale. All such transactions shall comply with the requirements in Exhibit D, Borrower Tax Certificate. The Borrower shall notify the Commission within five business days of the date on which the Borrower enters into an agreement to effect such transaction. The Borrower shall repay the Commission within 30 calendar days of receiving an invoice from the Commission for the balance due.
- H. Borrower shall not place any liens or encumbrances on the Project until the Loan is fully repaid.
- I. In accordance with Section 25415 of the Energy Conservation Assistance Act, Borrower covenants to take such action as may be necessary to include all payments due hereunder in its annual budget and to make the necessary annual appropriations for all such payments. The obligation of the Borrower to make such payments shall be limited to the savings realized by the Borrower as a result of implementing the Project funded by the Loan.

10. DEFAULT

- A. The Borrower's failure to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and an Event of Default. In such case, the Commission may declare this Agreement to have been breached and be released from any further performance hereunder.
- B. In the event of any default or breach of this Agreement by the Borrower, the Commission, without limiting any of its other legal rights or remedies, may to the extent permitted by law, declare the Promissory Note evidencing this Loan to be immediately due and payable.

11. REPORTING

- A. Progress reports are due quarterly until Project completion. Reports are due as follows:

Quarter	Report Due
January-March	April 5
April-June	July 5
July-September	October 5
October-December	January 5

A progress report submitted with an invoice, in accordance with Section 11.C. will meet the quarterly reporting requirement if submitted within 30 days before or after the progress report due date.

- B. A final report is due no later than 60 days after Project completion.
- C. A progress report must be submitted with each request (invoice) for Loan funds.
- D. If requested by the Commission, Borrower shall submit, within ten (10) days after the Commission's written request, a status report on its activities to date, pursuant to this Agreement.
- E. Reports shall be in a format as determined by the Commission.
- F. The Borrower shall submit reports regarding energy savings as described in Section 9.D above.

12. GENERAL TERMS

- A. Indemnification by Borrower. The Borrower agrees to indemnify, defend, and save harmless the Commission and the State and their officers, agents, and employees from any and all claims, losses, or costs (including reasonable attorney fees) arising out of, resulting from, or in any way connected with (1) the Loan or this Agreement, or the financing or the operation of the facilities financed with the Loan, or (2) the Borrower's violation or alleged violation of any tax covenant made or tax certificate executed in connection with the Loan or this Agreement or any action of the Borrower that causes interest on any bonds secured by repayment of the Loan to be included in gross income of the owners of such bonds for federal income tax purposes.

- B. Ownership of Equipment and Material. All equipment and material acquired under this Agreement shall become the property of the Borrower at time of purchase. The Borrower shall obtain and maintain in its records a written waiver of all claims, other than those previously made in writing and still unsettled, from each contractor who supplies goods and services, including management services, in connection with the Project.
- C. Independent Capacity. The Borrower, and the agents and employees of Borrower, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Commission or the State of California.
- D. Assignment. Without the written consent of the Commission, this Agreement is not assignable or transferable by Borrower either in whole or in part. The Commission may assign its rights under this Agreement for security purposes, and in such event the assignee of this Loan Agreement, including the bond trustee of any bonds which are secured by repayment of this Loan, shall be entitled to enforce the provisions hereof and shall be a third party beneficiary of this Agreement.
- E. Time of the Essence. Time is of the essence in this Agreement. Borrower is required to take timely actions which, taken collectively, move to completion of the purpose for which this Loan was awarded. The Commission Project Manager will periodically evaluate the progress toward completion. If the Commission Project Manager determines that the Borrower is not progressing toward completion within one (1) year after the effective date of this Agreement, the Commission Project Manager may, without penalty or prejudice to any of the Commission's other remedies, terminate this Agreement.
- F. Amendment. No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
- G. Severability. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
- H. Governing Law and Venue. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California. Venue shall be in Sacramento County.
- I. Non-discrimination. During the performance of this Agreement, Borrower and its contractors and subcontractors shall not unlawfully discriminate, harass, or

allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and family care leave. Borrower and its contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Borrower and its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this agreement by reference and made a part hereof as if set forth in full. Borrower and its contractors and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Borrower and its contractors shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

- J. Incorporation of Energy Conservation Assistance Act. The Energy Conservation Assistance Act, together with any applicable rules, regulations or procedures authorized by such statute, is incorporated by reference in this Agreement.
- K. Borrower Authorization. The Borrower certifies that it has full power and authority to enter into this Agreement, and this Agreement has been duly authorized, executed and delivered by the Borrower. The Borrower acknowledges that the resolution of its governing body or other official action authorizing it to enter into this Agreement also authorizes such further acts as are necessary, including execution of the Promissory Note, to implement and further the intent of this Agreement.
- L. Prevailing Wage. Borrower shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code relating to the payment of prevailing wage for work performed on the Project financed in whole or in part with the proceeds of the Loan.

13. TAX COVENANTS

The Borrower acknowledges that the proceeds of bonds issued by the California Infrastructure and Economic Development Bank, or other issuer authorized by law, may be used to fund all or a portion of this Loan and, in consideration of such funding, the Borrower hereby covenants that it shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of interest on such bonds under Section 103 of the Internal

Revenue Code of 1986 and the regulations issued thereunder, as the same may be amended from time to time. In furtherance of the preceding sentence, the Borrower hereby covenants that it will comply with the provisions of the Tax Certificate which is attached hereto as Exhibit D and incorporated herein as if fully set forth herein.

14. NOTICE

Any notice required to be given to the Commission hereunder shall be sent to the Commission at 1516 Ninth Street, MS-1, Sacramento, California 95814, attention Grants and Loans Office Manager, or at such other address as the Commission may designate in writing to the Borrower. Any notice required to be given to the Borrower hereunder shall be sent to the address shown below the Borrower's execution of this Agreement, or at such other address as the Borrower shall designate in writing to the Commission. Notice to either party may be given using the following delivery methods: certified mail, Federal Express, United Parcel Service, or personal delivery, providing evidence of receipt, to the respective parties identified in this Agreement. Delivery by fax or e-mail is not considered notice for the purposes of this Agreement. Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery in which case the effective date shall be postponed 24 hours, or whenever the next business day occurs.

IN WITNESS WHEREOF, this Loan Agreement has been executed by the parties hereto.

STATE OF CALIFORNIA – CALIFORNIA
ENERGY COMMISSION

BORROWER (If other than an individual, state
whether a corporation, partnership, etc.)

NAME OF BORROWER

Sherry Mediati

PRINTED NAME OF AUTHORIZED SIGNATURE

PRINTED NAME OF AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

MANAGER, GRANTS AND LOANS OFFICE
TITLE

TITLE

DATE

DATE

MAIL ADDRESS:

AMOUNT ENCUMBERED	FISCAL YEAR	FUND	LOAN NO.
\$	2003/2004	ECAA	
APPROPRIATION ORG. C-146, 033-3360-95-501 CH 611/95, Program Loan Acct. Series 2003A		Program-Expenditure Account for Bond Issue from 9326 Fund per PRC 25417.5 Item-0033-3360-95-501 CH 611, Statutes-1995	LINE ITEM ALLOTMENT 4400-626.03-44033
APPROPRIATION AUG		0033002 Program Loan Account Series 2003A	LINE ITEM ALLOTMENT
I HEREBY CERTIFY UPON MY OWN PERSONAL KNOWLEDGE THAT BUDGETED FUNDS ARE AVAILABLE FOR THE PERIOD AND PURPOSE OF THE EXPENDITURE STATED ABOVE.			
SIGNATURE OF ACCOUNTING OFFICER			DATE

EXHIBIT A
BUDGET DETAIL

EXHIBIT B

PROMISSORY NOTE

LOAN NUMBER: _____
PRINCIPAL AMOUNT: _____
INTEREST RATE: _____

1. For value received, the undersigned, (hereinafter referred to as the "Borrower"), promises to pay to the order of the State of California, Energy Resources Conservation and Development Commission (hereinafter referred to as the "Commission"), at its principal place of business at 1516 Ninth Street, Sacramento, California 95814, or at such other place as the Commission may designate, (1) the principal sum of _____ Dollars (\$ _____) or such lesser amount as shall equal the aggregate amount disbursed to the Borrower by the Commission pursuant to the above-referenced Energy Conservation Assistance Account Loan Agreement (the "Loan Agreement") between the Borrower and the Commission, together with interest thereon at the rate of ____ percent per annum on the unpaid principal, computed from the date of each disbursement to the Borrower, and (2) the amount of Commission reimbursement for technical assistance or feasibility study cost, if applicable, from the date the Commission executes the Loan Agreement, until the loan is repaid by the Borrower, at the rate of ____ percent per annum on the unpaid principal. Principal, together with interest thereon, is due and payable in semiannual installments as specified in the Estimated Amortization Schedule, attached hereto as Exhibit C, and as amended in the Final Amortization Schedule, beginning on or before December 22 of the fiscal year following the year in which the Project is completed and continuing thereafter on each June 22 and December 22 until said principal and interest shall be paid in full. The Final Amortization Schedule, and any amended Final Amortization Schedule(s) are not attached but are expressly incorporated by reference herein.
2. Payment of any scheduled installment received within thirty (30) days after its due date shall be considered to have been received on its due date and shall be first applied to accrued interest from the date of disbursal to the Borrower and the balance, if any, to principal. Payment of any scheduled installment received more than thirty (30) days after its due date but before the next billing shall be considered late, and interest on the unpaid principal shall accrue from date of disbursal to the Borrower through the actual payment date. However, payment of any scheduled installment received after a subsequent billing shall be considered overdue, and interest shall accrue on the unpaid principal from date of disbursal to the Borrower through the subsequent billing due date or actual payment date, whichever is later.
3. The Borrower may prepay this Promissory Note in full or in part, without penalty.
4. In accordance with Section 25415 of the Energy Conservation Assistance Act, Borrower covenants to take such action as may be necessary to include all payments due hereunder in its annual budget and to make the necessary annual appropriations for all such

payments. The obligation of the Borrower to make such payments shall be limited to the savings realized by the Borrower as a result of implementing the Project funded by the Loan.

5. If any installment is not paid within thirty (30) days after its due date, the Commission, at its option, may require the Borrower to pay a late charge equal to five percent (5%) of the amount of the installment or Five Dollars (\$5.00), whichever is greater.
6. On the occurrence of any event of default, the Commission, at its sole election and without limiting any of its other legal rights or remedies, may, to the extent permitted by law, declare all or any portion of the principal and accrued interest on this Promissory Note to be immediately due and payable and may proceed at once without further notice to enforce this Promissory Note according to law.
7. Each of the following occurrences shall constitute an event of default:
 - A. Failure of the Borrower to repay any principal or interest when due under the terms of this Promissory Note;
 - B. Termination of the Loan Agreement pursuant to the terms thereof or breach by the Borrower of any terms of said Loan Agreement;
 - C. Failure of the Borrower to undertake in a timely way the express and implied activities for which said Loan Agreement has been executed;
 - D. Failure of the Borrower to obtain prior written Commission approval before undertaking a change in the scope of the activities for which said Loan Agreement has been executed; or
 - E. Occurrence of (1) the Borrower becoming insolvent or bankrupt or being unable or admitting in writing its inability to pay its debts as they mature or making a general assignment for the benefit of or entering into any composition or arrangement with creditors; (2) proceedings for the appointment of a receiver, trustee, or liquidator of the assets of the Borrower or a substantial part thereof, being authorized or instituted by or against the Borrower; or (3) proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law, or any jurisdiction being authorized or instituted against the Borrower.
8. No delay or failure of the Commission in the exercise of any right or remedy hereunder or under any other agreement which secures or is related hereto shall affect any such right or remedy, and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof, and no action taken or omitted by the Commission shall be deemed a waiver of any such right or remedy.

9. Any notice to the Borrower provided for in this Promissory Note shall be given by mailing such notice by certified mail, return receipt requested, addressed to the Borrower at the address stated in the Loan Agreement, or to such other address as the Borrower may designate by notice to the Commission. Any notice to the Commission shall be given by mailing such notice by certified mail, return receipt requested, to the Commission at the address stated in the Loan Agreement, or at such other address as may have been designated by notice to the Borrower.
10. If suit is brought to collect any part of this Promissory Note, the Commission shall be entitled to collect all reasonable costs and expenses of said suit and any appeal therefrom, including reasonable attorney's fees.
11. This Promissory Note shall be binding upon the Borrower and its permitted successors and assigns and upon the Commission and its permitted successors and assigns. Without the written consent of the Commission, this Promissory Note is not assignable or transferable by Borrower either in whole or in part. The Commission may assign its rights under this Promissory Note for security purposes, and in such event the assignee of this Promissory Note, including the bond trustee of any bonds which are secured by repayments of this Promissory Note, shall be entitled to enforce the provisions hereof and shall be a third party beneficiary of this Promissory Note.
12. This Promissory Note shall be construed and enforced in accordance with the laws of the State of California.

BORROWER

PRINTED NAME OF AUTHORIZED
REPRESENTATIVE

AUTHORIZED SIGNATURE

TITLE

DATE

EXHIBIT C

ESTIMATED AMORTIZATION SCHEDULE

EXHIBIT D

TAX CERTIFICATE

LOAN NUMBER: _____
REVENUE BOND SERIES: _____
REVENUE BOND ISSUANCE DATE: _____

In connection with the issuance by the California Infrastructure and Economic Development Bank (the "Bank"), or other issuer authorized by law, of its Bonds, (the "Bonds"), a portion of the proceeds of which will be used to fund, in whole or in part, a loan to the undersigned borrower (the "Borrower"), under the Loan Agreement (the "Loan"), from the California Energy Commission (the "Commission"), to finance the acquisition and/or construction of a capital project of the Borrower (the "Project"), the Borrower hereby certifies, with respect to proceeds of the Loan drawn by the Borrower, as follows:

1. Use of Proceeds and Project. During the period in which the Loan is outstanding, the Borrower shall not (1) sell or otherwise dispose of the Project or any portion thereof to an entity that is not a governmental unit (for this purpose "governmental unit" shall mean only a state or local governmental unit), (2) enter into a lease of the Project or any portion thereof, regardless of type or duration, with an entity other than a governmental unit, (3) enter into a management or service contract with respect to the Project or any portion thereof with an entity other than a governmental unit, unless such management or service contract complies with the requirements of Revenue Procedure 97-13, 1997-1 C.B. 632, as amended by Revenue Procedure 2001-39, 2001-28, I.R.B. 38 (collectively, "Revenue Procedure 97-13"), (4) otherwise enter into any other arrangement with respect to the Project or any portion thereof that gives rise to a "private business use," within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"), of the Project or any portion thereof, or (5) make any other use of the proceeds of the Loan that gives rise to a "private business use" of the proceeds of the Loan or any portion thereof. The Borrower shall notify the Commission of any of the aforementioned transactions within five business days of the date on which the Borrower enters into an agreement to effect such transaction. In the case of a sale or disposition of the Project or any portion thereof by the Borrower to a governmental unit, such sale or disposition shall obligate the Borrower to require said governmental unit to assume all covenants and responsibilities in this section. In the event the Borrower sells or disposes of the Project or any portion thereof to a Governmental Unit, the Borrower shall, upon such sale or disposition, repay the Loan or portion thereof allocable to the Project or portion thereof, as the case may be, and shall apply any proceeds it derives from the sale of the Project or portion thereof, as the case may be, to such repayment. Such amount shall be due and payable to the Commission within thirty (30) calendar days of receiving an invoice from the Commission for the balance due. As of the date hereof, (a) no portion of the Project is subject to a lease with a person that is not a governmental unit, and (b) no portion of the Project is subject to a management or service contract, with an entity other than a governmental unit, that does not comply with Revenue Procedure 97-13.

2. No Further Loans. The Borrower shall not allocate any portion of the proceeds of the Loan to the financing of a loan by the Borrower to another entity.
3. No Payment of Debt. The Borrower shall not use any portion of the proceeds of the Loan to pay the principal of or interest on any outstanding indebtedness of the Borrower.
4. Permitted Bases for Paying Expenses. All proceeds of the Loan drawn by the Borrower shall either (1) be used to reimburse the Borrower for costs of the Project paid by the Borrower (a) in anticipation of receiving such proceeds, (b) prior to the date of requisition for such draw, and (c) after the date of approval of the Commission resolution authorizing payment from proceeds of the Bonds or the Energy Conservation Assistance Account, (2) reflect a direct payment by or on behalf of the Commission to the Borrower's vendor in accordance with an arrangement approved, established and implemented by the Commission with respect to such Borrower, or (3) reflect an alternative arrangement that has been approved by Bond Counsel with respect to the Bonds and communicated in writing by the Commission to the Borrower.
5. Capital Expenditures Only. The Borrower shall allocate the proceeds of the Loan solely to costs of the Project that constitute capital expenditures (which may include, among other things, "soft costs" that are properly capitalizable into the cost of the Project). No expenditures to which proceeds of the Loan will be allocated by the Borrower will be operating or working capital expenditures.
6. Economic Life of Project. The Project has a reasonably expected economic that is at least equal to the term of the Loan.
7. No Replacement of Other Moneys. No portion of the proceeds of the Loan is being used as a substitute for other moneys that (a) would have been used to finance the Project to which proceeds of the Loan are being allocated if proceeds of the Bonds were not used to fund the Loan, and (b) have been or will be used to acquire, directly or indirectly, securities or obligations or other investment property.
8. Payment of Loan Debt Service. Payments of debt service on the Loan shall be made directly by the Borrower and, except as provided in the next sentence, the Borrower shall not set aside any moneys for such purpose in advance of such payments. The Borrower may, if it chooses to do so, set aside moneys in a fund or account in advance of a debt service payment date, but only where the Borrower makes such set-aside no more than one year prior to the time such money will be needed, such that any moneys so set aside, together with investment earnings thereon, will be used within one year of such set-aside to pay debt service on the Loan. Any fund or account so established for such purpose will be depleted no less frequently than annually. The Borrower shall make no other set-aside, nor establish any other fund or account, that is reasonably expected to pay debt service on the Loan or that is otherwise pledged as collateral for the Loan so as to create a reasonable assurance that amounts represented by such set-aside, or in such fund or account, would be available to pay debt service on the Loan in the event the Borrower were to encounter financial difficulties. Nothing in this Section is intended to affect the

requirement that the Borrower make payments of debt service on the Loan from certain energy-related savings.

9. No Federal Guarantee. The Borrower shall not enter into any arrangement with respect to the Project or any portion thereof obligating the United States or any agency or instrumentality thereof to make payments of any kind to the Borrower.
10. No Purchase of Bonds. The Borrower shall not purchase any of the Bonds, on the open market or otherwise.

BORROWER

FEDERAL EMPLOYER IDENTIFICATION NUMBER

PRINTED NAME OF AUTHORIZED
REPRESENTATIVE

AUTHORIZED SIGNATURE

TITLE

DATE